

APPEAL NO. 042667  
FILED NOVEMBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 10, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to include an injury to the neck and left shoulder. The claimant appealed the determination based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision was mailed to the claimant on September 22, 2004. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision 5 days after it was mailed; in this case deemed receipt is September 27, 2004. Although the claimant asserts in her appeal that she did not receive the decision until October 6, 2004, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Accordingly, the last date for the claimant to timely file an appeal was October 18, 2004. The appeal was postmarked on October 19, 2004, and is stamped as received by the Commission's Chief Clerk of Proceedings on October 25, 2004. The claimant's appeal is, therefore, untimely.

The decision of the hearing officer is final in the absence of a timely appeal. Section 410.169. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge